

**RESOLUTION NO. 20220728-005**

**WHEREAS**, in Resolution No. 981209-11, Council approved the creation of Austin-Bergstrom Landhost Enterprises, Inc. (ABLE) as a nonprofit public facilities corporation under authority of Texas Local Government Code Chapter 303 for the purposes of acquiring, constructing, equipping, and improving a full service airport hotel (the Project) located on City-owned land at Austin-Bergstrom International Airport; financing the costs of acquiring and improving the Project through the issuance of airport hotel revenue bonds; and operating or providing for the operation of the Project; and

**WHEREAS**, on January 1, 2006, ABLE entered into a Hotel Management Agreement (the Agreement) with Boykin Prospera, LLC (the Manager) (as successor in interest to Boykin Enterprises Limited, LLC pursuant to that one certain Services Agreement dated as of June 16, 2008) for the operation of a full-service airport hotel at the Project; and

**WHEREAS**, the Agreement was amended and restated as of October 1, 2017 (Amended and Restated Hotel Management Agreement) and provides for an initial term of 60 months (through September 30, 2022) and which may be extended for up to two additional 12-month periods, unless earlier terminated; and

**WHEREAS**, in Resolution No. 20191017-024 Council reiterated the City's policy to promote labor peace and directed the Austin Convention Enterprises, Inc. (ACE) Board of Directors to brief Council and obtain Council support before executing an amendment to the ACE Operating Agreement; and

**WHEREAS**, in Resolution No. 20210603-075 Council directed the ABLE Board of Directors to follow the City's ACE Operating Agreement approval policy described in Resolution No. 20191017-024, including minimum briefing and Council approval standards therein, regarding any future amendment, renewal, successor, or extension of the Amended and Restated Hotel Management Agreement and all future hotel management agreements, which includes obtaining Council support before executing an amendment to the Amended and Restated Hotel Management Agreement; and

**WHEREAS**, the Manager entered into a labor peace agreement with Unite Here Local 23, effective April 4, 2022; and


**WHEREAS**, ABLE and the Manager have negotiated Amendment No. 1 to the Amended and Restated Hotel Management Agreement that complies with Resolution No. 20210603-075; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

The Austin City Council finds that the proposed amendment to the Amended and Restated Hotel Management Agreement meets the labor peace objectives established in Resolution No. 20191017-024 and otherwise supports the City's proprietary interest in the Project.

**BE IT FURTHER RESOLVED:**

The Council declares that the actions taken by ABLE since approval of Resolution No. 20210603-075 have fully met the objectives of that Resolution, that no further action by ABLE or the ABLE Board of Directors is required by that Resolution, and that ABLE may enter into the Amendment No. 1 to the Amended and Restated Hotel Management Agreement, attached as **Exhibit A**.

**ADOPTED:** July 28, 2022 **ATTEST:**   
Myrna Rios  
City Clerk

**Exhibit A**

**AMENDMENT NO. 1 TO  
AMENDED AND RESTATED  
HOTEL MANAGEMENT AGREEMENT  
BETWEEN  
AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.  
AND  
BOYKIN PROSPERA, LLC**

**THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT** (this “**Amendment**”) is made and entered into as of \_\_\_\_\_, 2022 (the “**Effective Date**”), between Austin-Bergstrom Landhost Enterprises, Inc., a Texas Public Facility Corporation (“**Owner**”), having its principal office at 3600 Presidential Blvd., Suite 411, Austin, Texas 78719, and Boykin Prospera, LLC, a Delaware limited liability company (“**Manager**”), having its principal offices at 2100 Georgetown Drive, Suite 401, Sewickley, PA 15143.

**RECITALS**

- A. Owner and Manager are parties to that Amended and Restated Hotel Management Agreement dated as of October 1, 2017 (the “**Original Agreement**”).
- B. Owner and Manager wish to amend the Original Agreement to make certain changes to Section 2.1 and Article 5 of the Original Agreement.
- C. Pursuant to Section 22.10 of the Original Agreement, the Original Agreement may be changed or modified only by an agreement in writing signed by the parties to the Original Agreement.
- D. Pursuant to Section 3 of Owner’s Amended and Restated Bylaws, any management agreement or franchise agreement pursuant to which the property of Owner Corporation is managed or operated, or any extensions thereto, shall be approved by the City Council of the City of Austin, Texas (the “**City Council**”).
- E. The City Council has approved this Amendment.

**NOW, THEREFORE**, for and in consideration of the premises, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Manager agree as follows:

1. Defined Terms. Unless otherwise defined in this Amendment, each capitalized term used in this Amendment shall have the meaning given to it in the Original Agreement.

2. Amendment of Section 2.1 of the Original Agreement. In Section 2.1 of the Original Agreement, the phrase “for an initial term of 60 months” is hereby amended to read “for an initial term of 84 months”.

3. Amendment of Article 5 of the Original Agreement. Article 5 of the Original

Agreement is hereby amended to add at the end of Article 5 new Section 5.11, new Section 5.12 and new Section 5.13, as follows:

- 5.11 Manager warrants that all employees, contractors, and subcontractors performing work on the Premises will be paid at least the City of Austin's Living Wage in accordance with all applicable Austin City Council Resolutions, including Resolution Nos. 20080605-047 and 20160324-020, or as may subsequently be amended, and that such Living Wage will be adjusted annually pursuant to Austin City Council Resolution No. 20141016-035, or as may subsequently be amended.
- 5.12 Pursuant to Austin City Council Resolution No. 20210603-075, or as may subsequently be amended, Manager and its affiliates and subtenants, if any, must implement a labor peace agreement with any labor organization that seeks to represent employees working as part of this Agreement. The labor peace agreement must include terms allowed by applicable law and Federal Aviation Administration requirements, and that meet the operational standards of the Austin-Bergstrom International Airport (“**Airport**”), including, at minimum, a binding and enforceable provision which prohibits work stoppages, boycotts, and other service disruptions by such labor organization, its members, and its agents at any Airport properties. A signed statement affirming the completion of a labor peace agreement with a labor organization that seeks to represent employees working as part of this Agreement must be submitted by Manager to Owner prior to the Effective Date of this Amendment.
- 5.13 Manager, upon request by a labor organization, may (to the extent permitted by law) enter into an appropriate voluntary recognition agreement (including "card check" recognition) covering an appropriate bargaining unit of Hotel personnel and may remain neutral in any organizing efforts by a labor organization of Hotel personnel. Manager will execute any collective bargaining agreement as the employer, subject to the conditions set forth below. Manager will consult with Owner in advance of, and, to the extent practicable, during the course of, negotiations with any labor union as to the terms of the collective bargaining agreement being negotiated. Manager will have no right to enter into any multi-employer group agreement without the prior written approval of Owner which may be granted or withheld in Owner’s reasonable discretion.

4. Remainder of Agreement. Except as expressly modified by this Amendment, the Original Agreement shall remain in full force and effect in accordance with its original terms.

5. Governing Law; Venue. This Amendment shall be construed, both as to its validity and as to the performance of the parties, in accordance with the laws of the state in which the Hotel is located. Venue for any dispute arising out of or concerning this Amendment, either administrative or judicial, shall be proper and lie exclusively in Travis County, Texas.

6. Authorization. Manager and Owner each represent to the other that the execution, delivery and performance of this Amendment (a) has been duly authorized by all requisite corporate action, (b) has been duly and validly executed and delivered, and (c) constitutes a valid and binding obligation of such party, enforceable in accordance with its terms.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, Manager and Owner have duly executed this Amendment No. 1 to Amended and Restated Hotel Management Agreement the day and year first above written.

AUSTIN-BERGSTROM  
LANDHOST ENTERPRISES, INC.

By: \_\_\_\_\_

Name: Gregory S. Milligan

Title: President

BOYKIN PROSPERA, LLC

By: \_\_\_\_\_

Name: [ ]

Title: [ ]